

DOCUMENT RESUME

02139 - [A1372357]

[Procurement Set-Asides for Small Business]. B-188800. May 10, 1977. 2 pp.

Decision re: City Electric, Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: Commerce and Transportation: Other Advancement
and Regulation of Commerce (403); General Government: Other
General Government (806).
Authority: Small Business Act (15 U.S.C. 637(a)). B-185055
(1975). B-186066 (1976). B-187567 (1977).

Objections were raised to Small Business Administration (SBA) negotiations on a contract award with a firm which the protester contended was a large business. Under existing legislation, procurement "set-asides" for small business are decided by SBA and the contracting agency, size status is determined by SBA, and these decisions are not reviewed by GAO in the absence of fraud. (HTW)

2351

02139

DECISION



Revised
PL 7-1

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-188600

DATE: May 10, 1977

MATTER OF: City Electric Inc.

DIGEST:

1. Determination to set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and SBA, and is not subject to review by GAO in absence of fraud or bad faith of Government officials.
2. Protest concerning small business size status is not for consideration by General Accounting Office since conclusive authority to decide size status of concern is vested by statute in Small Business Administration.

City Electric Inc. has protested to our Office the decision by the Small Business Administration (SBA) to negotiate the award of a contract with a firm which it contends is a large business minority contractor. The protester states that the procurement amounts to approximately \$5 million and contends that the work should be formally advertised.

We have been advised by a representative of the SBA that the procurement in question is an "8(a) set-aside" being conducted under the authority of the "8(a) program" (a program designed to assist small business concerns owned and controlled by socially or economically disadvantaged persons).

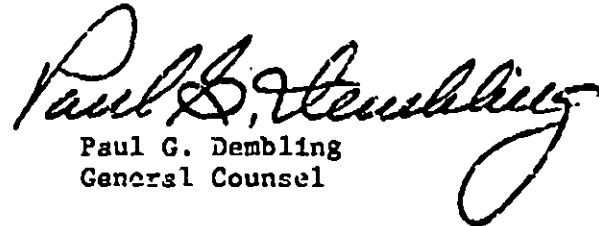
In view of the broad discretion accorded the SBA under the Small Business Act (15 U.S.C. § 637(a) (1970)) to enter into contracts with procuring agencies for the purpose of letting subcontracts to "8(a) firms," this Office no longer reviews decisions to set aside or not to set aside procurements unless the protester shows fraud on the part of Government officials or such willful disregard of the facts by Government officials as necessarily to imply bad faith. Whether or not the procurement should be set aside under section 8(a) is a matter for the contracting agency and the SBA to decide. See Automation Information Data Systems, Inc., B-185055, June 15, 1976, 76-1 CPD 377; Jet Services Inc., B-186066, May 4, 1976, 76-1 CPD 300. The protester

B-188800

has not alleged or demonstrated fraud or bad faith on the part of any Government officials in deciding to set aside the procurement under the 8(a) program.

City Electric also appears to be questioning the small business size status of the firm with whom the SBA negotiated. Under 15 U.S.C. § 637(b)(6) (1970), the SBA is empowered to conclusively determine matters of small business size status for Federal procurement purposes and the decisions of the SBA and its Size Appeals Board are not subject to review by our Office. Gibraltar Industries, Inc., B-187567, January 31, 1977, 77-1 CPD 78. We have been advised by a representative of SBA that a protest filed by another party against the small business size status of the firm with whom the SBA negotiated is presently pending before the SBA Seattle Office and involves an objection similar to that raised by City Electric.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel